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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 MICHAEL E. JENKINS,
12 Plaintiff,
13 vs.
14 ALLIED PACKING, et al.,
15 Defendants.

Case No. 08-cv-01671-L-JMA

**STIPULATION JOINTLY REQUESTING
ORDER DISMISSING DEFENDANT VIAD
CORP. WITHOUT PREJUDICE AND
REMANDING CASE IN ITS ENTIRETY TO
STATE COURT AND (PROPOSED) ORDER**

Hearing Date: December 8, 2008
Time: 10:30 a.m.
Courtroom.: 14
Judge: Hon. M. James Lorenz

Complaint Filed: July 21, 2008

21 Plaintiff Michael Jenkins ("Plaintiff") and defendant Viad Corp. ("Viad") submit this
22 stipulation jointly requesting that the Court issue an order dismissing without prejudice Plaintiff's
23 action against Viad Corp. and remanding this case in its entirety to state court.

24 IT IS HEREBY STIPULATED by and between Plaintiff and Viad, through their respective
25 attorneys of records, as follows:

26 Plaintiff initiated this action on July 21, 2008, by filing his complaint for damages in the
27 Superior Court of the State of California for the County of San Diego, Case No. 37-2008-
28 00088099-CU-AS-CTL.

1 Following service of summons on its agent for service of process, Viad timely removed this
 2 case to the United States District Court for the Central District of California, asserting defenses
 3 under federal law to Plaintiff's action against Viad. No other defendant filed and served a notice of
 4 removal in this case, *Michael E. Jenkins. vs. Allied Packing, et al.*, 08-cv-01671-L-JMA, and no
 5 other defendant joined in Viad's notice of removal.

6 Plaintiff has filed a motion to remand the case to the Superior Court of the State of
 7 California for the County of San Diego. Viad has filed opposition to that motion, asserting the
 8 Court's removal jurisdiction under 28 U.S.C. § 1442(a)(1). No other defendant has filed and
 9 served opposition to Plaintiff's motion to remand. Plaintiff's motion to remand is pending before
 10 the Court.

11 Plaintiff and Viad jointly request that the Court dismiss without prejudice Plaintiff's action
 12 against Viad and remand this case in its entirety to state court. With the dismissal of Plaintiff's
 13 action against Viad, there will remain in this action no party that has invoked the jurisdiction of the
 14 Federal courts in this case.

15 Plaintiff's willingness to stipulate to the dismissal without prejudice of his action against
 16 Viad is conditioned upon the remand of this case in its entirety to the Superior Court of the State of
 17 California for the County of San Diego, and Viad's willingness to stipulate to the remand of this
 18 case to state court is conditioned on the dismissal without prejudice of Plaintiff's action against it.
 19 If the Court orders the dismissal without prejudice of Plaintiff's action against Viad and the remand
 20 of this case in its entirety to state court, Plaintiff and Viad will waive any claims for costs and
 21 expenses as against each other.


22 IT IS SO STIPULATED.

23 DATED: November 10, 2008

Respectfully submitted,

BRENT COON & ASSOCIATES

By:


 LENNEAL K. GARDNER

Attorneys for Plaintiff

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6 Attorney for Plaintiff
7 Michael E. Jenkins

8 DATED: November 10, 2008

Respectfully submitted,

FOLEY & MANSFIELD PLLP

By: 

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16 Attorneys for Defendant
17 Viad Corp.

18 **IT IS HEREBY ORDERED THAT:**

19 Based on the stipulation of the above parties, defendant Viad Corp is hereby dismissed
20 without prejudice from the instant action. It is further ordered that the above case, *Michael E.*
21 *Jenkins. vs. Allied Packing, et al.*, 08-cv-01671-L-JMA, be remanded to the Superior Court of the
22 State of California in and for the County of San Diego .

23 DATED: November 13, 2008.


HONORABLE M. JAMES LORENZ
Judge of the United States District Court